

## **APPENDIX 2 - NUISANCE BY-LAW**

### **Town of Framingham By-Laws, Article V. “Health and Safety”**

#### **Section 22 Nuisance Bylaw**

[Adopted: Article 24, Annual Town Meeting, 2002]

Approved by the Attorney General on 7/1/02

#### **22.1 AUTHORITY AND PURPOSE**

Pursuant to the general powers granted to cities and towns by Article 89 of the Amendments to the Massachusetts Constitution, and the specific powers granted by Massachusetts General Laws, Chapter 139, Sections 1-3A, this Bylaw is adopted for the prevention of future nuisances and the removal of existing nuisances within the Town, which nuisances constitute a hazard of blight, or adversely affect property values.

#### **22.2 DEFINITIONS**

##### **22.2.1 Blight**

Any condition that seriously impairs the value, condition strength, durability or appearance of real property, including real property owned or occupied by an Interested Party as defined in section 4.2.5 below.

##### **22.2.2 Building**

A structure, whether portable or fixed, with exterior walls or firewalls and a roof, built, erected or framed, of a combination of any materials, to form shelter for persons, animals, or property. See “structure” below.

##### **22.2.3 Dilapidated**

A condition of decay or partial ruin by reason of neglect, misuse, or deterioration. The term includes, but is not limited to:

Property having deteriorated or ineffective waterproofing of exterior walls, roofs, foundations or floors, including broken or inadequately secured windows or doors;

Property having defective weather protection (such as paint, stain, siding or tarpaulin) for exterior wall covering; deleterious weathering due to lack of such weather protection or other protective covering.

Personal property that is broken, rusted, worn, partially or wholly dismantled or otherwise due to deterioration is unsuitable for the purpose for which designed.

##### **22.2.4 Hazard**

A condition likely to expose persons to injury, or property to damage, loss or destruction.

##### **22.2.5 Interested Parties**

In connection with the notification requirements of this bylaw Interested Parties are the Building Commissioner; owner(s) and/or occupants of property which is the subject of a hearing; owners and/or occupants of property directly opposite the subject property on any public or private street or way, owners and/or occupants of property abutting the subject property, and owners and/or occupants of property abutting, and that is within 300 feet of, the property line of the subjected property. Other persons who own or occupy property and who demonstrate to the satisfaction of the Building Commissioner that they are affected by the condition of the property or building that is the subject of a hearing may be regarded as Interested Parties by the Building Commissioner.

##### **22.2.6 Nuisance**

Any substantial interference with the common interest of the general public in the maintaining decent, safe, and sanitary structures that are not dilapidated, and neighborhoods, when such interference results from the hazardous or blighted condition of private property, land or buildings. The fact that a particular structure or use may be permitted under the zoning bylaw does not create an exemption from the application of this bylaw. The term includes but is not limited to:

- (a) burned structures not otherwise lawfully habitable or usable,
- (b) dilapidated real or personal property,
- (c) dangerous or unsafe structures or personal property,

- (d) overgrown vegetation which may harbor rats and vermin, conceal pools of stagnant water or other nuisances, or which is otherwise detrimental to neighboring properties or property values,
- (e) dead, decayed, diseased or hazardous trees, debris or trash,
- (f) signs as described in section 1.19.2 of the sign bylaw,
- (g) personal property that is exposed to the elements without protection against deterioration, rust or dilapidation,
- (h) vehicles, machinery or mechanical equipment or parts thereof that are located on soil, grass or other porous surfaces that may result in the destruction of vegetation or contamination of soil,
- (i) in any Residence District, keeping of more than one commercial vehicle, or of a tractor that exceeds a gross vehicle weight of three-quarters (3/4) of a ton for hauling a van or trailer as defined by the Registry of Motor Vehicles.
- (j) personal property that has been placed for the collection as rubbish or refuse in violation of Article VI, section 4.1 of the Town Bylaws other than as approved by the Director of Public Works, or left in public view for more than seven days.

#### **22.2.7 Occupant**

A person who occupies real property with the consent of the owner as a lessee, tenant at will, licensee or otherwise. The singular use of the term includes the plural when the context so indicates.

#### **22.2.8 Owner**

Every person who alone or jointly or severally with others (a) has legal title to any building, structure or property to this Bylaw; or (b) has care, charge, or control of any such building structure or property in any capacity including but not limited to agent, executor, executrix, administrator, administratrix, trustee or guardian of the estate of the holder of legal title; or (c) lessee under a written letter agreement; or (d) mortgage in possession; or (e) agent, trustee or other person appointed by the courts.

#### **22.2.9 Responsible Party**

The owner or occupant (in the case of real property) of property that is the subject of proceedings under this by-law. The singular use of the term includes the plural when the context so indicates.

#### **22.2.10 Structure**

A combination of materials, whether wholly or partially level with, above or below the surface of the ground, whether permanent or temporary, assembled at a fixed location to give support, shelter or enclosure such as a building, (see above), framework, retaining wall, stand, platform, bin, fence (having a height at any point of six feet or greater above grade), parking area sign, flagpole, or mast for an antenna or the like.

### **22.3 ADMINISTRATION**

#### **22.3.1 Enforcement**

This Bylaw shall be enforced by the Building Commissioner.

If the Building Commissioner shall be informed or have reason to believe that any provision of this Bylaw has been, is being, or is likely to be violated, he shall make or cause to be made an investigation of the facts, including an investigation of the property where the violation may exist. If he finds any violation he shall give immediate notice in writing to the Owner and to the Occupant of the premises and shall immediately cease. In making such inspection, the Building Commissioner shall have such right of access to premises that may be lawfully exercised by him under the laws and constitution of the Commonwealth or of the United States.

If, after such notice and order, such violation continued, or if any Owner or Occupant fails to obey any lawful order of the Building Commissioner with respect to any violation of the provisions of the Bylaw, the Building Commissioner may make complaint to the Superior Court or any court of competent jurisdiction an any injunction or order restraining any further use of the premises and the continuation of the violation and shall take such other action as is necessary to enforce the provisions of this Bylaw.

In addition to the foregoing remedy, whoever violates any provision of this Bylaw or fails to obey any lawful order issued by the Building Commissioner in enforcing this Bylaw shall be liable to a fine of not more than three hundred (\$300.00) for each violation. Each violation of this Bylaw shall constitute a separate offense. Each day that any such violation continues shall constitute a separate offense.

The Building Commissioner may require disclosure to him/her of the identity of the person bringing a complaint of nuisance. The Building Commissioner may require that such complaint be made under oath or subject to the penalties of perjury. If the Building Commissioner determines that a reported condition may warrant immediate action, constitute a substantial violation of this Bylaw, or adversely affect protected interests of others than the complainant, the Building Commissioner may commence action under this Bylaw without requiring the disclosure of the identity of the complainant.

If the Building Commissioner determines that the condition is subject to the jurisdiction of the Board of Health or is a violation of the State Sanitary Code or any health regulation, in addition to enforcing this Bylaw, he shall refer the matter to the Director of Public Health of the town appropriate state or town officials for action.

During his investigation of the matter, the Building Commissioner may consult, but is not required to do so, with any Interested Party in an attempt to obtain voluntary compliance with this Bylaw without the need to issue a notice of violation.

#### **22.3.2 Notice to Complainant**

In any matter in which a complaint has been made by a person other than the Building Commissioner, the Building Commissioner shall promptly notify the complainant in advance of all conferences or proceedings concerning resolution of the nuisance complaint or of any enforcement action and the complainant shall be allowed to be present and to be heard.

#### **22.3.3 Removal of Nuisance by Selectmen**

If the Responsible Party fails to remedy the nuisance upon notice from the Building Commissioner to do so, the Board of Selectmen may cause the nuisance to be removed as provided in General Laws c. 139.

#### **22.3.4 Review by the Town Manager**

Any Interested Party who has filed a written complaint of a nuisance with the Building Commissioner upon which complaint the Building Commissioner has determined that the condition is not a nuisance, or has taken other action that the Interested Party claims is inadequate shall have a right to a review of the matter by the Town Manager. At the request of such an Interested Party, the Town Manager shall confer with the Building Commissioner and shall recommend appropriate action to the Building Commissioner and to the Board of Selectmen.

#### **22.3.5 Reports by Building Commissioner**

The Building Commissioner shall file with the Town Manager each month a report that shall include all complaints of nuisance made to him during the prior month; all proceedings begun by him under this Bylaw; all pending complaints and all investigations and enforcement actions taken by him or referred to the Commissioner of Public Health. The report shall state the location of the premises, a summary of the nature of the complaint, the name of the Responsible Party(ies), and the disposition or the status of the matter.